

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

ORDER

-against-

JACOB “KOBI” ALEXANDER,
DAVID KREINBERG, and
WILLIAM F. SORIN,

06-CV-3844 (NGG)

Defendants.

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GARAUFIS, United States District Judge.

Plaintiff Securities and Exchange Commission (“Plaintiff” or “Commission”) has moved pursuant to Federal Rule of Civil Procedure 12(f) to strike Defendant Jacob “Kobi” Alexander’s (“Alexander” or “Defendant”) second (failure to effectuate proper service of process), third (statute of limitations), and fourth (laches) affirmative defenses. Both parties have submitted evidence outside the pleadings with respect to the motion to strike Alexander’s service of process defense. As a result, the parties are hereby placed on notice that this court may exercise its discretion to convert the Commission’s Rule 12(f) motion into a motion for partial summary judgment pursuant to Rule 56. See Liberty Mutual Ins. Co. v. Precision Valve Corp., 402 F. Supp. 2d 481, 484-85 (S.D.N.Y. 2005) (converting a Rule 12(f) motion into a motion for summary judgment where the parties submitted facts outside the pleadings). Accord Alliance Media Group, Inc. v. Mogul Media, Inc., No. 02-CV-5252 (SLT), 2005 WL 1804473, at *1 (E.D.N.Y. 2005); Paretti v. Cavalier Label Co., 702 F. Supp. 81, 85 (S.D.N.Y. 1988) (“While conversion of a motion to strike into a motion for summary judgment is not explicitly authorized by the Federal Rules of Civil Procedure, where, as here, both parties clearly view the motion,

however styled, as a motion for summary judgment, it will be so treated under Fed. R. Civ. P. 56(b).”).

Although the parties were well aware that evidence outside the pleadings had been submitted and essentially treated the motion as one for summary judgment, out of an abundance of caution, the court will provide the parties another opportunity to present additional evidence and/or briefing on the issue of whether the Commission is entitled to partial summary judgment with respect to Alexander’s service of process defense. The court is of the opinion that no further briefing or factual submissions are necessary, but both parties are free to make any additional submissions on or before September 20, 2007, should they so choose. No extensions of time will be granted.

SO ORDERED.

Dated: September 12, 2007
Brooklyn, N.Y.

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge